IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE.

CRIMINAL R. APPLICATION NO. 178 OF 2004

Krishnakumar Shetty & ors ...Petitioner

versus

Krishna Raj Rai and anr. ...Respondent.

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Mr. D.G. Bagwe for the petitioners.
Mr Girish Kulkarni & Satyen Vora for Respondents.
Mrs. V.R.Bhonsale APP for State.

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CORAM; V.G. PALSHIKAR, J.

DTAED; 22ND JUNE, 2005.

P.C.

1. By this application, the applicant has challenged the order passed by the learned Sessions Judge quashing the complaint filed by the present applicant under section 420 IPC. The learned Sessions Judge found on perusal and scrutiny of the complaint that the complaint does not ex-facto make out any crime as contemplated by section 415 of IPC. He therefore proceeded to quash the complaint and discharged the accused. This order is impugned in this case.

2. Reliance is placed in the judgment of the Supreme Court of India reported in **2000 ALL MR (Cri) 999** where the Supreme Court has observed that the powers of quashing the complainant should be sparingly exercised

only when the offence is made out primafacie. In otherwords the complaint as it stand should make out an offence as complained of in the complaint. In the present case the allegations of the complainant is that he acted as an agent and sold several flats to the respondents who wanted to buy them and ultimately was entitled to earn some money by way of his brokerage and other incidental expenses incurred. Even if every allegation in this complaint is accepted as correct, the ingredients of section 415 are not made out. The petitioner was not induced to do something or committed something which ought not to have done or committed. The complainant on completion of the contract accepted some premium by way of brokerage, which was not done. It is therefore a pure case of breach of contract if any and is of civil nature. Failure to perform according to the conditions of contract cannot come within the perview of sectiion 420 IPC. Hence no jurisdictional error has committed by the learned Judge for quashing the complaint. I therefore see no substance in the petition. The same is dismissed.

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